

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	)	
On its Own Motion	)	Docket No. 04-0071
	)	
Amendment of 83 Ill. Adm. Code 725	)	

**REPLY COMMENTS OF THE STAFF OF THE  
ILLINOIS COMMERCE COMMISSION**

The Staff of the Illinois Commerce Commission (“Staff”), by and through its attorneys, and pursuant to the direction of the Administrative Law Judge Code, submits the following reply comments on the proposed adoption of 83 Ill. Admin. Code Part 725 (“Part 725”), “Standards of Service Applicable to 9-1-1 Emergency Systems.”

**EXECUTIVE SUMMARY**

Pursuant to and in conformity with Section 10 of the Emergency Telephone System Act, 50 ILCS 750/10 (“the Act”), Staff has proposed revisions to Part 725 – Standards of Service Applicable to 9-1-1 Emergency Systems. This rule provides the guidelines that the Commission uses to develop the technical and operational standards for local 9-1-1 systems’ development.

After publication of the proposed rule in the Illinois Register, the St. Clair County Emergency Telephone System Board (“St. Clair County”) filed comments with the Commission.

St. Clair County urges the Commission to decline to adopt Staff’s proposed changes to Sections 725.105 and 725.400. St. Clair County Supplemental Comments at 2. Specifically, it requests that no changes be made to the definition of “system

provider” as the rule is currently written in Part 725. Id. St. Clair also opposes the new standard allowing only one 9-1-1 system provider to provide for database and selective routing, proposing instead that it be allowed to select separate providers for each of the services. St. Clair County Initial Comments at 1.

Staff recommends that these proposals be rejected. Under the proposed revision, the definition of “system provider” and the correlating general standard subsection, 725.400, were intended to make the Part 725 definition consistent with the definition adopted by the General Assembly in the Act. Accordingly, Staff’s proposal is, unlike St. Clair County’s, squarely consistent with the Act.

### **BACKGROUND**

Pursuant to Section 10 of the Act, 50 ILCS 750/10, the Commission is charged with developing the technical and operational standards for local agency systems’ development. The Commission has done so by rule. See 83 Ill. Admin. Code §725.10 *et seq.* The Commission Staff reviews Commission rules periodically to determine whether amendment is necessary or desirable, and indeed the Commission is required by law to do so in some cases. See 220 ILCS 5/13-512. Consistent with this, the Staff reviewed Part 725, and determined revisions to that Part were necessary. Workshops were duly convened to seek a consensus regarding the revisions. See Staff Report.

On January 20, 2004, the Staff submitted its Staff Report to the Commission outlining recommended changes to Part 725. See Initiating Order. The Commission, on its own motion, entered an Order initiating the proceeding on February 4, 2004. Id.

In the *Initiating Order*, the Commission directed the proposed amended Rule be submitted to the Secretary of State for first notice publication in the Illinois Register

("First Notice"). Initiating Order at 1. The Proposed amended Code Part 725 was published in the Illinois Register on February 27, 2004. See Vol. 28, Issue 9 at 3636 - 3682. The Illinois Register requested comments be filed with the Commission within 45 days of publication.

In response to First Notice, the Illinois Telecommunications Association ("ITA") filed comments on March 8, 2004, and Staff and St. Clair County filed comments on April 12, 2004. Staff hereby replies to the St. Clair County comments.<sup>1</sup>

### **REPLY**

St. Clair County proposes that "system provider" be defined as it is currently written in Part 725. See *generally* St. Clair County Initial Comments, and St. Clair County Supplemental Comments. Under the present rule, "system provider" is defined as:

**An** entity providing 9-1-1 network or selective routing or database services.  
(emphasis added)

Under the proposed change, it is defined as:

**The** contracted entity that is certified as a telecommunications carrier by the Commission providing 9-1-1 network and database services.  
(emphasis added)

St. Clair County asserts that such a change "tightens and constricts the authority presently extended by the rule." Id. at 2. It argues that the Commission "misconstrues" the purpose of its rulemaking authority by not giving "expression to legislative policy." St. Clair County Supplemental Comments at 2.

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<sup>1</sup> The ITA fully endorsed Staff's proposed amendments. See ITA Comments.

While it is true that Commission rules must give expression to legislative policy, such authority does not allow the Commission to promulgate rules and regulations that are contrary to the statute. Part 725 *implements* Section 10 of the Act; it does not, however, *supplant* the statute as written. Accordingly, the Commission's rules must conform to the statute, not the reverse.

The basic rule – and, indeed, the purpose – of statutory construction is to

give effect to the intent of the legislature. ... The best evidence of legislative intent is the language used in the statute itself and that language must be given its plain and ordinary meaning. ... The statute should be construed as a whole and, if possible, in a manner such that no term is rendered meaningless or superfluous. ... Where the meaning of a statute is unclear from a reading of its language, courts may look beyond the language of the statute and consider the purpose of the law, the evils it was intended to remedy, and the legislative history behind it.

M.A.K. v. Rush-Presbyterian-St. Luke's Medical Center, 198 Ill.2d 249 (2001) (internal citations omitted); see also Matsuda v. Cook County Employees and Officers Annuity and Benefit Fund, 178 Ill. 2d 360, 364; 687 N.E. 2d 866 (1997); Bruso v. Alexian Brothers Hospital, 178 Ill. 2d 445, 452; 687 N.E. 2d 1014 (1997); Branson v. Dept. of Revenue, 168 Ill. 2d 247, 254; 659 N.E. 2d 961 (1995).

Thus, the threshold task for a court or tribunal in construing a statute is to examine the terms of the statute. Toys "R" Us v. Adelman, 215 Ill. App. 3d 561, 568; 574 N.E. 2d 1328 (3<sup>rd</sup> Dist. 1991).

In addition, it is clear that a court must construe a statute as it is, and may not supply omissions, remedy defects, or add exceptions and limitations to the statute's application, regardless of its opinion regarding the desirability of the results of the statute's operation. Adelman, 215 Ill. App. 3d at 568; cf. Thornton v. Mono Mfg. Co., 99 Ill. App. 3d 722, 425 N.E. 2d 522 (2<sup>nd</sup> Dist. 1981) (in determining that application of statute of limitations barring minor's products liability claim was proper, if perhaps harsh,

court observed that, where statute is clear, only legitimate role of court is to enforce the statute as enacted by legislature); People ex rel. Racing Bd. v. Blackhawk Racing, 78 Ill. App. 3d 260, 397 N.E. 2d 134 (1<sup>st</sup> Dist. 1979) (court observed that, though the General Assembly could have enacted a statute more effective in accomplishing its purpose than the one it did enact, the court was not permitted to rewrite the statute to remedy this defect).

Moreover, it is clear that:

As a general rule, courts will accord deference to the interpretation of a statute by the agency charged with its administration. An agency's interpretation is not binding, however, and will be rejected when it is erroneous.

City of Decatur v. AFSCME Local No. 268, 122 Ill. 2d 353 (1988).

The Commission, therefore, is charged with promulgating rules and regulations that are consistent with statutory language.

In applying basic rules of statutory construction, the Commission must first look to the plain language of the statute in question, and here there is no reason to do more. Section 2.18 of the Act serves as the source of St. Clair County's argument. This section defines "system provider" as: "***the contracted entity*** providing 9-1-1 network and database services." 50 ILCS 750/2.18 (emphasis added).

Staff proposes, and other workshop participants agree, that Part 725's definition of "system provider" be amended to closely conform to the analogous definition in the Act. The General Assembly clearly chose to use the definite article "the", instead of the indefinite "an", in describing "system provider." Accordingly, it must be concluded that the General Assembly intended each ETSB to have one single system provider ("***the*** system provider"), and not more than one. Thus, if the rule is to accord with the plain

language of the statutory definition, it must require an ETSB to select *the single* entity that will provide it with 9-1-1 network *and* database services. The use by the General Assembly of the article “the” and the conjunctive “and” makes it clear that this is what the General Assembly intended; the statute is clear and unambiguous.

Further, if there is to be – as the General Assembly clearly intended – one and only one system provider, that system provider must be a telecommunications carrier. It is self-evident that 9-1-1 network services are telecommunications services within the meaning of Section 13-203 of the Public Utilities Act. See 220 ILCS 5/13-203 (“telecommunications carrier” defined). Likewise, it is clear that telecommunications carriers must obtain certificates of service authority prior to providing telecommunications services. 220 ILCS 5/13-401. Accordingly, the inclusion of the phrase “entity that is certified as a telecommunications carrier by the Commission” in the proposed definition of “system provider” is entirely lawful and proper.

While Staff understands St. Clair County’s desire to expand its contracting alternatives, the specific terms of the Act do not support – indeed, they specifically rebut – St. Clair County’s contention that expanding its ability to contract with multiple entities to provide network and database service providers separately is permissible under the statute. In contrast, the Staff’s proposal squarely conforms to the statute. Staff, therefore, urges that St. Clair County’s proposal be rejected, and reiterates its position that the Part 725 definition of “system provider” be amended to conform to the Act, and that its proposed rules be adopted in their entirety.

WHEREFORE, the Staff respectfully requests that the Commission adopt the Proposed Amended Rule in its entirety and as presented in Staff's Initial Comments.

Respectfully submitted,

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